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No. _____

In The
Supreme Court of The United States
October Term 1996

BLYTHEVILLE COMPRESS CO., INC., et al.,
Petitioners,

v.

BANKERS TRUST COMPANY,
Respondent.

Petition For A Writ Of Certiorari
To The United States Court of
Appeals For The Sixth Circuit

PETITIONERS' REPLY BRIEF

*CHARLES J. SWAYZE, JR.
JAMES Y. DALE
Whittington, Brock, Swayze and Dale
P.O. Box 941
Greenwood, MS 38935

(601) 453-7325

Attorneys for Petitioners
**Counsel of Record*

LEGAL ADVANTAGE - Appellate Service
432 Walnut Street * Suite 200 * Cincinnati, OH 45202
(800) 581-2252

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№_____

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JAMES Y. DALE
WHITTINGTON, BROCK, SWAYZE
AND DALE
P. O. BOX 941
GREENWOOD, MS 38935
(601) 453-7325
Attorneys for Petitioners
**Counsel of Record*

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THE PETITION MEETS THE REQUIREMENTS OF SUPREME COURT RULE 10

It is obvious from respondent's opposition brief that there is need for review by this Court to interpret the terms of the United States Warehouse Act and the enforcement of tariffs through which cotton warehouses operate promulgated under that Act.

At the very core of this dispute lies the authority given the Secretary of Agriculture under the United States Warehouse Act in approving the language and rules and regulations of warehouses through the promulgation of their tariffs. The decisions of the District Court and the United States Court of Appeals are in direct conflict with the decisions by the United States Supreme Court in its interpretation and enforcement of tariffs issued pursuant to the Interstate Commerce Act, an act analogous to the United States Warehouse Act. The District Court and Court of Appeals have ignored the importance of the cotton warehouses' tariffs and the rules set forth therein, particularly rules setting forth who is responsible for warehouse charges. The warehouse tariff is the only effective method of

contracting between parties in the warehousing industry.

RESPONSE TO COUNTERSTATEMENT OF THE CASE

This case is governed by the United States Warehouse Act and the rules and regulations issued thereunder by the Secretary of Agriculture. Bankers Trust has mislead this Court in its many assertions of "fact". Both the District Court and the Court of Appeals have determined that the owner of the subject warehouse receipts and underlying cotton was Bankers Trust. Therefore, Bankers Trust's repeated statements that the warehouses stored The Julien Company's cotton and shipped The Julien Company's cotton are clearly erroneous. Bankers Trust also ignores the fact that the warehouse receipts were surrendered by L & S Cotton Systems, an agent of Bankers Trust Company, under cover of L & S's transmittal letter, the terms of which are set forth in the dissenting opinion of Chief Judge Merritt: "Each time it (Bankers Trust) wrote a letter to the warehouse giving the shipping instruction and saying that 'the documents [warehouse receipts showing ownership in the Bank, bills of lading, and shipping instructions] were at all times to be

held and handled by you in trust for our account.' The Bank, as owner, had complete control over the warehouse receipts and hence complete control of the cotton. The Bank, as owner of the cotton, directly and knowingly requested by letter and used the services of the warehouses." Appendix at p. 28. Also, see copy of transmittal letter at page 42 of the Appendix.

The District Court and Court of Appeals have simply failed or neglected to enforce the terms of the tariffs. Their rulings have been in total disregard of all United States Supreme Court decisions and Courts of Appeal's decisions enforcing tariffs of a similar nature promulgated under the Interstate Commerce Act, an act similar to the United States Warehouse Act. It is essential to the warehousing industry that their rights and rules and regulations set forth under their tariffs be enforced just as tariffs are enforced under the Interstate Commerce Act and other Federal Acts.

RESPONSE TO RESPONDENT'S CORRECTION OF MISSTATEMENTS OF FACT OR LAW IN THE PETITION

Responding item by item to the respondent's statement of petitioners' facts in paragraphs (a) through (j), petitioners would show:

(a) It is undisputed that the petitioner warehouses provided warehousing services for Bankers Trust. As set forth in Chief Judge Merritt's dissent at page 27 of the Appendix: "The facts in the appellate record suggest that: The warehouses, in lawful possession of the cotton, acted to store and preserve the cotton for the benefit of the Bank as owner of the cotton without the express consent of the Bank. The benefit was not forced on the Bank against its will. When the Bank ceased taking warehouse receipts and funding The Julien Company, and then placed it into involuntary bankruptcy, it was well aware that the warehouse charges were unpaid and that it had accepted the benefit of their storage services."

(b) Most of petitioners' tariffs provide that: "All accrued charges will be billed to and collected from the

parties surrendering the warehouse receipts." Appendix at p. 51-52, Note 11. Furthermore, the 6th Circuit opinion at page 7 of the Appendix refers to "liability" when it states: "Many of the tariffs, in turn, state that whoever surrenders the receipts will be liable for the storage charges."

(c) The basis for jurisdiction alleged in petitioners' Third Amended Complaint was diversity of citizenship pursuant to 28 U.S.C. § 1332. However, at page 4 of petitioners' Petition it is simply stated that "a federal question existed concerning the interpretation and enforcement of the United States Warehouse Act, 7 U.S.C.A. § 241 et seq." This statement is true.

(d) Respondent has misquoted petitioners at page 5, paragraph d. by adding in brackets the word "warehouse", and by adding the word "filed" after "such as those". The word "warehouse" was not intended or understood to be describing the type of tariff referred to in that sentence. The sentence, at page 4 of petitioners' Petition, correctly states petitioners' position that the United States Supreme Court "has consistently decided in its judicial

opinions that a filed and published tariff such as those in this case has the enforceability of law." It is clear even from a cursory review of petitioners' Petition that petitioners are analogizing tariffs promulgated under the Interstate Commerce Act to those tariffs promulgated under the United States Warehouse Act.

(e) As noted in respondent's brief, 15 of the 28 petitioners are federally licensed warehouses and clearly subject to the terms of the United States Warehouse Act. The other 13 petitioners' tariffs were approved by the United States Department of Agriculture. Those tariffs of non-federally licensed warehouses with language similar to those in the federally licensed warehouse tariffs should be given the same enforceability of law.

(f) At no point in the Petition do petitioners assert that the Interstate Commerce Act itself is controlling. What is stated is that "the United States Warehouse Act has not garnered significant judicial attention; but, the rates, rules and regulations, which are components of the Interstate Commerce Act, have been interpreted extensively.

These cases are instructive to the case at bar and controlling." Petition for Writ of Certiorari at p. 7.

(g) Both the District Court and the Court of Appeals have determined that Bankers Trust was the party that surrendered the subject warehouse receipts. It is petitioners' position that those courts improperly found as a fact that Bankers Trust was not the shipper within the meaning of some tariffs. This ambiguity would be for a finder of fact and not for a court to determine on summary judgment.

(h) The United States Supreme Court's decisions relating to the Interstate Commerce Act constitute authority that the proper promulgation and posting of a tariff under a Federal Act results in constructive notice of the terms of the charges and rules contained therein.

(i) Petitioners stand by their position that it is clearly understood within the cotton industry that a negotiable cotton warehouse receipt will change hands many times in the course of a cotton season and that the identity of each subsequent holder is obviously unknown to the warehouse until it is

surrendered for the bale of cotton. This Court, or for that matter any court, can take judicial knowledge of this fact, a fact which has never been disputed in the case sub judice. The Sixth Circuit opinion at page 12 of the Appendix makes reference to "a subsequent holder of the warehouse receipt." The District Court found petitioners' assertion as factual. In its opinion at page 39 of the Appendix, its states: "In this way, simply by transfer of the negotiable warehouse receipt, the cotton may be sold several times without the bale itself ever moving from its original storage location."

(j) Petitioners' statement that Bankers Trust recovered 100% of the value of the cotton stored by petitioners is argument based on fact. However, this statement is substantiated by the dissenting opinion of Chief Judge Merritt at page 28 of the Appendix when he states: "Thereafter, the Bank accepted the proceeds of the sale of the cotton which the warehouses had preserved." The fact remains that Bankers Trust benefitted from the services of the warehouses and became unjustly enriched by not being required to pay for those services.

REASONS FOR GRANTING THE WRIT

I. Petitioners' Claims Warrant Review.

A. There is a federal question.

B. Decisions Relating to the Interstate Commerce Act are Relevant.

The primary issue before this Court is whether or not a tariff issued pursuant to the United States Warehouse Act and the rules and regulations promulgated thereunder has the same enforceability of law as does a tariff issued under the Interstate Commerce Act.

C. The Federal Decisions are in Conflict

As set forth in petitioners' Petition, all United States Courts of Appeal, as well as the United States Supreme Court, have ruled in favor of the enforceability of tariffs issued pursuant to the Interstate Commerce Act. The District Court and Sixth Circuit's opinions in the case sub judice are in conflict with all of the cited authorities which enforce the terms of the tariffs issued under the Interstate Commerce Act.

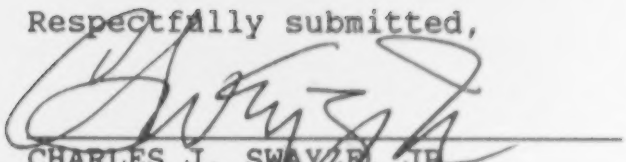
II. Summary Judgment by the District Court and its Affirmance by the Sixth Circuit Court of Appeals are Erroneous

This Court should review these decisions and grant certiorari so as to put new life into the warehouse tariffs, thereby allowing warehouses to contract with holders of the negotiable warehouse receipts who also are the owners of the underlying cotton. To not correct the situation as presently existing under the terms of the Sixth Circuit opinion will be devastating to the cotton warehouse industry in that there will be no means by which they can contract with parties storing cotton with them. There is thus a compelling reason for this Court to grant petitioners' Petition for Writ of Certiorari.

CONCLUSION

The Petition presents serious questions concerning the enforceability of a tariff promulgated and issued pursuant to the United States Warehouse Act and warrants review by this Court. Accordingly, this Court should grant petitioners' Petition for Writ of Certiorari.

Respectfully submitted,



CHARLES J. SWAYZE, JR.
COUNSEL OF RECORD
JAMES Y. DALE
WHITTINGTON, BROCK, SWAYZE
AND DALE
P. O. BOX 941
GREENWOOD, MS 38935
(601) 453-7325
Attorneys for Petitioners